IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

R.S.A.No.3516 of 2004

Date of Decision : 21.08.2007

Sat Pal .....Appellant

versus

Pardip Kumar and others ....Respondents

CORAM : HON'BLE MR.JUSTICE HEMANT GUPTA

Present: Mr.Avnish Mittal, Advocate for the appellant
Mr.Vishal Sharma, Advocate for the respondents.

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JUDGMENT

HEMANT GUPTA, J. (Oral)

The plaintiff is in second appeal aggrieved against the judgment and decree passed by the Courts below whereby his suit for declaration claiming the estate of his father Amar Nath, by way of natural succession was dismissed, wherein the challenge was also to the Will dated 4.4.1994.

The stand of the defendant was that in a family settlement, the plaintiff has got his share of the land and such family settlement was recognized by the Civil Court judgment and decree. The defendants have also relied upon the Will dated 4.4.1994 whereby the property was bequeathed in favour of the defendants.

Both the Courts below have returned a concurrent finding of fact that a family settlement was arrived at and a Writing dated 28.12.1986 was executed. On the basis of said family settlement, Amar Nath suffered a decree in favour of the appellant on 2.4.1991 vide judgment and decree Exhibits D-3 and D-3/A. It was found that the Will dated 4.4.1994 is

proved to be executed on the basis of statement of Scribe of the Will DW-1 Ashok Kumar Kathpal, attesting witnesses DW-2 Krishan Lal and DW-3 Manohar Lal Nagpal. It is found that the said Will is not surrounded by any suspicious circumstances.

In the present second appeal, the learned counsel for the appellant has vehemently argued that the Will dated 4.4.1994 is purportedly executed when the deceased Amar Nath was admitted in the hospital and died soon thereafter on 13.4.1994. The manner of execution of the Will and the fact that the testator died soon after the alleged execution of the Will, is a strong suspicious circumstance which goes a long way and that the Will cannot be relied upon. The said argument raised by the learned counsel for the appellant is not sustainable for a number of reasons. Firstly, the family settlement is proved to be arrived at and the terms of which were reduced in writing on 28.12.1986. Such execution of the said family settlement is proved by Shri Ram Sukhija, scribe of the Writing and DW-4 Abinash Chander, attesting witness. On the basis of such family settlement, Amar Nath has suffered a consent decree as well on 2.4.1991. Still further vide Exhibit P-2 dated 12.6.1993, an advertisement in the newspaper, the plaintiff was disinherited from the property. Subsequently, Amar Nath, though admitted in hospital on 4.4.1994, is proved to have executed the Will. It has also come on record that the Sub Registrar attested the Will while visiting the hospital itself.

The said findings of fact returned by both the Courts below is on the basis of proper appreciation of evidence. It could not be pointed out that any evidence has been misread or not taken into consideration.

Thus, I do not find any patent illegality or irregularity in the findings recorded by the learned Courts below which may give rise to any substantial question of law in second appeal for consideration of this Court.

The appeal stands dismissed in limine.

21-08-2007 **(HEMANT GUPTA)**
mohinder* **JUDGE